

24.05.2016

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By email

Dear [REDACTED]

### **Request under the Freedom of Information Act 2000 (the "FOI Act")**

I refer to your email of 26 April 2016 in which you requested information under the FOI Act. Since 1 April 2016, Monitor and the NHS Trust Development Authority (the NHS TDA) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the NHS TDA.

#### **Your request**

You made the following request:

*I would like to make a request under the Freedom of Information Act please.*

*Pg.11 of this [https://improvement.nhs.uk/uploads/documents/BM1643\\_Corporate\\_report.pdf](https://improvement.nhs.uk/uploads/documents/BM1643_Corporate_report.pdf) makes reference to "internal audit reports on the Oversight and Escalation process and the Success Regime", could I get copies of these please?.'*

#### **Decision**

NHS Improvement does hold the information that you have requested, which are internal audit reports relating to the exercise of particular NHS TDA functions, and considered by the NHS TDA's Audit and Risk Committee. NHS Improvement has decided to withhold all of the information that it holds on the basis of the applicability of the exemption in section 41 of the FOI Act as explained below. I note that a similar internal audit reports relating to Monitor's functions has been withheld in response to another FOI requests – see <https://www.gov.uk/government/publications/foi-internal-audit-report-prepared-for-monitor-on-processes-for-distressed-finance>

#### **Section 41 – information provided in confidence**

Section 41(1) provides that information is exempt if:

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The internal audit report to which you refer was prepared for the NHS TDA by the Health Group Internal Audit Service (HGIA) which is part of the Department of Health. It contains detailed, confidential information about the auditors' findings and it reflects conversations between the auditors and TDA staff which were held in confidence. It also includes the auditors' assessment of internal control issues identified and recommendations on actions that should be taken to rectify those issues. The report was provided under the expectation that it would be read by NHS Improvement management only and not by a wider audience.

NHS Improvement has previously sought the views of HGIA about release of internal audit reports under the FOI Act. Their policy is not to publish or release such reports. They have previously pointed out that internal audit services are supplied to NHS Improvement under a service level agreement which stipulates that property in working papers and reports are retained by HGIA. Their view is that disclosure of such reports would, or would be likely to, prejudice the internal audit function that HGIA provides by discouraging cooperation with auditors, thereby adversely impacting on their ability to fulfil their responsibilities to NHS Improvement and other audited bodies in the future. I agree with this view.

#### *Public interest test*

The public interest test inherent in section 41 is such that confidential information should not be disclosed unless the public interest in its disclosure outweighs the public interest in withholding the information. There is a strong public interest in maintaining duties of confidence which should not be readily displaced. Against this, I have considered (and I accept) that there is a public interest in fostering transparency in relation to the processes of public bodies including NHS Improvement. NHS Improvement does however publish information relating to internal audits. In this case, the report you requested was presented to Monitor's Audit and Risk Committee on 18 February 2016 and the minutes of that meeting are published – they appear as Annex 4 of the Corporate Report to NHS Improvement's Board on 28 April, which is available on our website using the link set out in your request. The minutes record that each area covered by the audits has been awarded a rating of 'moderate', that no high level risks had been identified in either area, and that remedial actions had been agreed for each area of risk and would be monitored through the usual channels.

Having weighed up these competing factors, I have concluded that the public interest in this case does not favour disclosure of the information.

#### **Review rights**

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an

internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement's staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review conducted by NHS Improvement, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, Monitor, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to [foi@monitor.gov.uk](mailto:foi@monitor.gov.uk).

### **Publication**

Please note that this letter will shortly be published on the .GOV.UK website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g. your name and contact details) from the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,



**Jemma Griffiths**  
**Corporate Business Unit**